

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

655M0655

## HOUSE BILL NO. 1203

Introduced by: Representative Gillespie and Senator Bogue

1 FOR AN ACT ENTITLED, An Act to define marital and nonmarital property for the purposes  
2 of the division of property between parties at divorce.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 25-4-44 be amended to read as follows:

5 25-4-44. When a divorce is granted, the ~~courts~~ court may make an equitable division of the  
6 marital property belonging to either or both, whether the title to such property is in the name of  
7 the husband or the wife. In making such division of the property, the court shall have regard for  
8 equity and the circumstances of the parties.

9 Section 2. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 For the purposes of § 25-4-44, nonmarital property is all property:

- 12 (1) Acquired prior to the marriage;
- 13 (2) Acquired by inheritance or gift from any third party or source;
- 14 (3) Excluded by valid agreement;
- 15 (4) That is the direct result of the increase in value of assets that are nonmarital property.
- 16 All other assets of the parties are marital property.



1       Section 3. That chapter 25-4 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       Nonmarital property does not become marital property solely because of commingling.  
4       However, the increase in value of assets that are nonmarital property may be marital property  
5 if:

- 6       (1)   Appreciation was the result of investment of marital property in the nonmarital  
7             property; or  
8       (2)   Appreciation was the result of marital labor in managing or improving the nonmarital  
9             property.